

1 A bill to be entitled  
 2 An act relating to general assignments; amending s.  
 3 727.103, F.S.; defining the term "negative notice";  
 4 amending s. 727.104, F.S.; requiring an assignee's  
 5 bond to be in at least a specific amount or double the  
 6 liquidation value of the unencumbered and liquid  
 7 assets of the estate, whichever is higher; amending s.  
 8 727.108, F.S.; authorizing an assignee to conduct  
 9 certain discovery to determine whether to prosecute  
 10 certain claims or causes of action; extending the time  
 11 period an assignee may conduct the business of the  
 12 assignor; authorizing the assignee to continue  
 13 conducting the business of the assignor under certain  
 14 circumstances by serving negative notice; amending s.  
 15 727.109, F.S.; extending the time period for which a  
 16 court may authorize an assignee to conduct the  
 17 business of the assignor; amending s. 727.110, F.S.;  
 18 providing procedures for an assignee's rejection of an  
 19 unexpired lease of nonresidential real property or of  
 20 personal property; requiring the assignee to serve a  
 21 notice of rejection on certain persons and file it  
 22 with the court; requiring that a notice of rejection  
 23 for personal property include certain information  
 24 about the affected property; specifying the effective  
 25 date of the rejection; requiring the estate's rights  
 26 and obligations to and liability for the affected  
 27 property to terminate under certain circumstances;  
 28 amending s. 727.111, F.S.; extending the minimum time

29 | period for giving notice to the assignor and  
 30 | creditors; conforming language; providing a procedure  
 31 | for serving notice on certain persons; requiring an  
 32 | objection to be filed and served within a specific  
 33 | time period; requiring the notice to be in a specified  
 34 | form; providing that the assignee may take certain  
 35 | actions if an objection is not filed; requiring the  
 36 | court to hear a filed objection; authorizing the court  
 37 | to shorten negative notice under certain  
 38 | circumstances; providing that a party may raise the  
 39 | shortened notice period in certain objections;  
 40 | requiring a certificate of service for negative notice  
 41 | to be filed with the court under certain  
 42 | circumstances; requiring negative notice to be given  
 43 | to certain persons under certain circumstances;  
 44 | amending s. 727.113, F.S.; providing procedures for  
 45 | serving an objection to a claim; providing that the  
 46 | Florida Rules of Civil Procedure apply to objections  
 47 | to claims in all pending cases beginning on a specific  
 48 | date; creating s. 727.117, F.S.; requiring an  
 49 | assignee's deed to be in a specific form; providing an  
 50 | effective date.

51 |  
 52 | Be It Enacted by the Legislature of the State of Florida:  
 53 | Section 1. Present subsection (13) of section 727.103,  
 54 | Florida Statutes, is redesignated as subsection (14), and a new  
 55 | subsection (13) is added to that section, to read:  
 56 | 727.103 Definitions.—As used in this chapter, unless the

57 | context requires a different meaning, the term:

58 |       (13) "Negative notice" means notice as set forth in s.  
 59 | 727.111(4) which, unless a response is filed within 21 days  
 60 | after the date of service thereof, allows certain actions set  
 61 | forth in the notice to occur.

62 |       Section 2. Subsection (2) of section 727.104, Florida  
 63 | Statutes, is amended to read:

64 |       727.104 Commencement of proceedings.—

65 |       (2) Within 10 days after delivery of the assignment to the  
 66 | assignee, the assignee shall:

67 |       (a) Record the original assignment in the public records  
 68 | of the county in which the assignor had its principal place of  
 69 | business and shall thereafter promptly record a certified copy  
 70 | of the assignment in each county where assets of the estate are  
 71 | located.~~‡~~

72 |       (b) File, in the office of the clerk of the court in the  
 73 | county of the assignor's place of business if it has one, in the  
 74 | county of its chief executive office if it has more than one  
 75 | place of business, or in the county of the assignor's residence  
 76 | if the assignor is an individual not engaged in business, in  
 77 | accordance with the procedures for filing a complaint as set  
 78 | forth in the Florida Rules of Civil Procedure, a petition  
 79 | setting forth the name and address of the assignor and the name  
 80 | and address of the assignee; a copy of the assignment, together  
 81 | with Schedules A and B; and a request that the court fix the  
 82 | amount of the assignee's bond to be filed with the clerk of the  
 83 | court. This bond is ~~shall be~~ subject to reconsideration upon the  
 84 | motion of any party in interest after notice and hearing. The

85 | bond ~~is shall be~~ payable to the clerk of the court, in an amount  
 86 | not less than \$25,000 or double the liquidation value of the  
 87 | unencumbered and liquid assets of the estate as set forth in  
 88 | Schedule B, whichever is higher, conditioned upon the assignee's  
 89 | faithful discharge of her or his duties. Within 30 days after  
 90 | the court enters an order setting the amount of such bond, the  
 91 | assignee shall file the bond with the clerk of the court, who  
 92 | shall approve the bond.

93 | Section 3. Subsections (1) and (4) of section 727.108,  
 94 | Florida Statutes, are amended to read:

95 | 727.108 Duties of assignee.—The assignee shall:

96 | (1) Collect and reduce to money the assets of the estate,  
 97 | whether by suit in any court of competent jurisdiction or by  
 98 | public or private sale, including, but not limited to,  
 99 | prosecuting any tort claims or causes of action that ~~which~~ were  
 100 | previously held by the assignor, regardless of any generally  
 101 | applicable law concerning the nonassignability of tort claims or  
 102 | causes of action. ~~, and,~~

103 | (a) With respect to the estate's claims and causes of  
 104 | action, the assignee may:

105 | 1. Conduct discovery as provided under the Florida Rules  
 106 | of Civil Procedure to determine whether to prosecute such claims  
 107 | or causes of actions.

108 | 2. Prosecute such claims or causes of action as provided  
 109 | in this section. ~~or~~

110 | 3. Sell and assign, in whole or in part, such claims or  
 111 | causes of action to another person or entity on the terms that  
 112 | the assignee determines are in the best interest of the estate

113 | under ~~to~~ s. 727.111(4). ~~and~~

114 |       (b) In an action in any court by the assignee or the first  
 115 | immediate transferee of the assignee, other than an affiliate or  
 116 | insider of the assignor, against a defendant to assert a claim  
 117 | or chose in action of the estate, the claim is not subject to,  
 118 | and any remedy may not be limited by, a defense based on the  
 119 | assignor's acquiescence, cooperation, or participation in the  
 120 | wrongful act by the defendant which forms the basis of the claim  
 121 | or chose in action.

122 |       (4) Conduct the business of the assignor for a limited  
 123 | period ~~that may not to~~ exceed 45 ~~14~~ calendar days, if doing so  
 124 | is in the best interest of the estate, or for a longer period  
 125 | ~~if,~~ in the best interest of the estate, upon notice and until  
 126 | such time as an objection, if any, is sustained by the court,  
 127 | ~~however, the assignee may not operate the business of the~~  
 128 | ~~assignor for longer than 45 calendar days without a court order~~  
 129 | ~~authorizing such operation if an objection by a party in~~  
 130 | ~~interest is interposed to the assignee's motion for authority to~~  
 131 | ~~operate the assignor's business. An assignee's authorization to~~  
 132 | conduct the business of the assignor may be extended for a  
 133 | period longer than 45 days upon service of negative notice. If  
 134 | no timely objection is filed with the court, the assignee may  
 135 | continue to operate the assignor's business for an additional 90  
 136 | days. The court may extend the 90-day period if it finds an  
 137 | extension to be in the best interest of the estate.

138 |       Section 4. Subsection (3) of section 727.109, Florida  
 139 | Statutes, is amended to read:

140 |       727.109 Power of the court.—The court shall have power to:

141 (3) Upon notice and a hearing, if requested, authorize the  
 142 business of the assignor to be conducted by the assignee for  
 143 longer than 45 ~~14~~ calendar days, if in the best interest of the  
 144 estate.

145 Section 5. Subsection (3) is added to section 727.110,  
 146 Florida Statutes, to read:

147 727.110 Actions by assignee and other parties in  
 148 interest.—

149 (3) As to an assignee's rejection of an unexpired lease of  
 150 nonresidential real property or of personal property, as  
 151 provided under ss. 727.108(5) and 727.109(6):

152 (a) The assignee shall file a notice of rejection with the  
 153 court and serve a copy on the owner or lessor of the affected  
 154 property and, for personal property, on the landlord of the  
 155 premises on which the property is located. A notice of rejection  
 156 relating to personal property must identify the affected  
 157 property, the address at which the affected property is located,  
 158 the name and telephone number of the person in possession of the  
 159 affected property, and the deadline for removal of the affected  
 160 property.

161 (b) The effective date of the rejection is the date of  
 162 entry of a court order authorizing such rejection.

163 (c) If the lessor of the affected property fails to take  
 164 possession thereof after notice of the rejection, the estate's  
 165 rights and obligations to and liability for the property  
 166 terminate upon the effective date of the rejection.

167 Section 6. Subsections (4), (6), and (8) of section  
 168 727.111, Florida Statutes, are amended to read:

169           727.111 Notice.-  
 170           (4) The assignee shall give the assignor and all creditors  
 171 at least ~~not less than~~ 21 ~~20~~ days' notice by mail of a proposed  
 172 sale of assets of the estate other than in the ordinary course  
 173 of business, the assignee's continued operation of the  
 174 assignor's business for longer than 45 ~~44~~ calendar days, the  
 175 compromise or settlement of a controversy, and the payment of  
 176 fees and expenses to the assignee and to professional persons  
 177 employed by the assignee pursuant to s. 727.108(7). The notice  
 178 shall be served on all creditors and their attorneys, if any, at  
 179 the address provided in the creditor's proof of claim. If a  
 180 proof of claim has not been filed by a creditor that is  
 181 registered to do business in this state, the notice must be  
 182 served on the creditor's registered agent as listed with the  
 183 Division of Corporations of the Department of State and on the  
 184 creditor's attorney, if known. If a proof of claim has not been  
 185 filed and the creditor does not have a registered agent within  
 186 the state, the notice must be served on the creditor at the  
 187 address listed in the schedules filed by the assignor. Objection  
 188 ~~Any objections~~ to the proposed action must be filed and served  
 189 upon the assignee and the assignee's attorney, if any, within 21  
 190 days after service of the notice ~~not less than 3 days before the~~  
 191 ~~date of the proposed action.~~ The notice shall be in the  
 192 following form: ~~must include a description of the proposed~~  
 193 ~~action to be taken, the date of the proposed action, and the~~  
 194 ~~date and place for the hearing at which any objections will be~~  
 195 ~~heard.~~

197 NOTICE OF OPPORTUNITY TO OBJECT AND REQUEST A HEARING

198

199 IN THE CIRCUIT COURT

200 OF THE . . . .

201 CIRCUIT, IN AND FOR

202 . . . . COUNTY,

203 FLORIDA

204

205 IN RE: . . . . . ,

206 Assignor,

207 TO: . . . . . ,

208 Assignee.

209

210 TO CREDITORS AND OTHER INTERESTED PARTIES:

211

212 PLEASE TAKE NOTICE that, pursuant to s. 727.111(4), Florida  
213 Statutes, the assignee may . . . (List applicable action(s)  
214 described in s. 727.111(4)) . . . , and the Court may consider these  
215 actions without further notice or hearing unless a party in  
216 interest files an objection within 21 days from the date this  
217 paper is served. If you object to the relief requested in this  
218 paper, you must file your objection with the Clerk of the Court  
219 at . . . (Clerk's address) . . . , and serve a copy on the assignee's  
220 attorney . . . (attorney's name and address) . . . , and any other  
221 appropriate person.

222

223 If you file and serve an objection within the time permitted,  
224 the Court shall schedule a hearing and notify you of the

225 | scheduled hearing. If a hearing is already scheduled, list the  
226 | date, time, and location of the hearing: ...(date, time, and  
227 | location)...

228 |  
229 | If you do not file an objection within the time permitted, the  
230 | assignee and the Court will presume that you do not oppose the  
231 | granting of the relief requested in the paper.

232 |  
233 | .....  
234 | ASSIGNEE

235 | Attorney for assignee (if any):.....

236 | Address:.....

237 |  
238 | If no objections are ~~not~~ timely filed and served, the assignee  
239 | may take such action as described in the notice without further  
240 | order of the court or may obtain an order approving the action  
241 | without further notice or hearing ~~of the court granting such~~  
242 | ~~motion if the assignee reasonably believes that the order is~~  
243 | ~~necessary to proceed with the action contemplated by the motion.~~  
244 | If an objection is filed, the court shall hold a hearing on the  
245 | objection.

246 | (6) For good cause shown and without notice of hearing,  
247 | the court may shorten the notice or negative notice period or  
248 | limit the parties to whom notice or negative notice need be  
249 | given, pursuant to subsection (3) or subsection (4). This  
250 | subsection does not affect the right of a party in interest to  
251 | raise the shortened notice period in any objection to the relief  
252 | sought under subsection (4).

253 (8) Wherever notice or negative notice is required to be  
 254 given under this chapter, a certificate of service of such  
 255 notice or negative notice shall be filed with the court, and  
 256 notice or negative notice shall be given to all consensual  
 257 lienholders and counsel who have filed a notice of appearance  
 258 with the court or who are identified in the assignor's  
 259 schedules.

260 Section 7. Subsection (1) of section 727.113, Florida  
 261 Statutes, is amended, and subsection (5) is added to that  
 262 section, to read:

263 727.113 Objections to claims.—

264 (1) At any time before ~~prior to~~ the entry of an order  
 265 approving the assignee's final report, the assignee or any party  
 266 in interest, ~~including another creditor of the assignor,~~ may  
 267 file with the court an objection to a claim, which objection  
 268 must be in writing and set forth the nature of the objection,  
 269 and shall serve a copy thereof on the creditor at the address  
 270 provided in the proof of claim, and to the assignee and the  
 271 assignee's attorney, if any. The objection may be served on  
 272 negative notice. A copy of the objection, together with notice  
 273 ~~of hearing thereon, shall be mailed to the creditor at least 20~~  
 274 ~~days prior to the hearing.~~ All claims properly filed with the  
 275 assignee and not disallowed by the court constitute all claims  
 276 entitled to distribution from the estate.

277 (5) The discovery provisions of the Florida Rules of Civil  
 278 Procedure apply to objections to claims in all cases pending on  
 279 July 1, 2013, or filed thereafter.

280 Section 8. Section 727.117, Florida Statutes, is created

281 to read:

282 727.117 Assignee's deed form.—If an assignee sells  
 283 property of the estate, the deed shall be in substantially the  
 284 following form:

285  
 286 ASSIGNEE'S DEED

287  
 288 This Assignee's Deed is made and executed this .... day of  
 289 ...., ... (year)...., by ...., as Assignee for the Estate of ....,  
 290 Case No. .... in the Circuit Court of .... County, Florida,  
 291 whose post office address is .... (hereinafter "Grantor"), to  
 292 ...., whose post office address is .... (hereinafter "Grantee").

293 Wherever used herein, the terms "Grantor" and "Grantee"  
 294 include all the parties to this instrument, singular and plural,  
 295 and the heirs, legal representatives, and assigns of these  
 296 individuals, and the successors and assigns of corporations,  
 297 wherever the context so admits or requires.

298  
 299 WITNESSETH:

300  
 301 That Grantor, for and in consideration of the sum of Ten  
 302 Dollars (\$10.00) and other good and valuable consideration in  
 303 hand paid to said Grantor by Grantee, the receipt of which is  
 304 hereby acknowledged, hereby grants, bargains, sells, aliens,  
 305 remises, releases, conveys, and confirms unto Grantee, all of  
 306 that certain real property lying and being in the County of  
 307 ...., State of Florida, more particularly described as follows:  
 308

309 SEE ATTACHED "EXHIBIT A," which is incorporated herein by  
 310 the term "Property".

311  
 312 This conveyance is subject to taxes accruing for the year  
 313 of conveyance and subsequent years, and all encumbrances,  
 314 covenants, conditions, and restrictions of record, except  
 315 nothing herein operates to reimpose same.

316  
 317 TOGETHER with all the tenements, hereditaments, and  
 318 appurtenances thereto belonging or in anywise appertaining.

319  
 320 TO HAVE AND TO HOLD the same in fee simple forever.

321  
 322 AND the Grantor hereby covenants with said Grantee that  
 323 Grantor has good right and lawful authority to sell and convey  
 324 said Property.

325  
 326 Grantor executed this instrument only in Grantor's capacity  
 327 as Assignee of the above referenced Assignment estate and no  
 328 personal judgment shall ever be sought or obtained against  
 329 Grantor individually by reason of this instrument.

330  
 331 IN WITNESS WHEREOF, said Grantor has caused these presents  
 332 to be executed the day and year first written above.

333  
 334 GRANTOR:

335  
 336 ...(Grantor's Signature)...

337 | Print Name:.....

338 | As Assignee for the Estate of ...(Assignor's Name)...

339 | Case No. ....

340 | Circuit Court of .... County, Florida

341 |

342 | Signed, sealed and delivered

343 | in the presence of:

344 |

345 | ...(Witness's Signature)...

346 | Witness

347 | ...(Witness's Name Printed)...

348 | Print Name

349 |

350 | ...Witness's Signature...

351 | Witness

352 | ...(Witness's Name Printed)...

353 | Print Name

354 |

355 | STATE OF FLORIDA

356 | COUNTY OF ....

357 |

358 | Sworn to and subscribed before me this .... day of .....,

359 | ...(year)..., by ...(Assignee's Name)..., as Assignee for the

360 | Estate of ...(Assignor's Name)..., Case No. ...., Circuit Court

361 | of .... County, Florida, on behalf of said estate.

362 |

363 | ...(Signature of Notary Public - State of Florida)...

364 | ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

PCS for HB 833

ORIGINAL

2013

365 | Personally Known .... OR Produced Identification ....

366 | Type of Identification Produced:....

367 | Section 9. This act shall take effect upon becoming a law.